RAYMOND K. STEITZ

IBLA 81-936 Decided September 21, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. U-46718.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Raymond K. Steitz has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 22, 1981, rejecting his simultaneous oil and gas lease application, U-46718. Appellant's application was drawn with first priority for parcel UT-136 in the July 1980 simultaneous oil and gas lease drawing.

On March 25, 1981, pursuant to a "Notice of Rental Due," BLM required appellant to submit, within 30 days, executed lease forms, the first year's advance rental payment and a statement of any understanding or written agreement or contract under which assistance was rendered to appellant "in connection with this filing." On April 24, 1981, appellant complied with BLM's request, including submitting copies of certain written agreements dated November 19, 1979, between himself and Bethal Capital, Inc. (Bethal), "under which Bethal assisted me in connection with this filing."

The agreements indicate that Bethal was to render certain services to appellant in connection with the simultaneous oil and gas leasing program, including recommending parcels, filing applications and paying the first year's advance rental on awarded leases. In its July 1981 decision, BLM rejected appellant's application U-46718 because appellant had failed to submit a copy of his written agreement with Bethal with his application, in accordance with 43 CFR 3102.2-6(a). 1/

The applicable regulation, 43 CFR 3102.2-6(a), provides, in relevant part:

> Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. [Emphasis added.]

In his statement of reasons for appeal, appellant contends that he complied with 43 CFR 3102.2-6(a) by filing a copy of his written agreement with Bethal at the time of filing his lease offer, i.e., the executed lease forms and the first year's advance rental payment. 2/ Appellant argues that the critical language in the regulation, providing that an applicant shall submit "with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, indicates that an applicant may submit the required document at the time the lease application is filed or at the time the lease offer is submitted. Appellant notes that the commonly accepted meaning of the word "or" is as indicating an alternative, citing Webster's Seventh New Collegiate Dictionary (1966) and a number of court cases. In addition, appellant notes that the preamble to the final rulemaking, published in the Federal Register, which adopted the language in 43 CFR 3102.2-6(a) supports this construction.

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102, effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. See 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

2/ The applicable regulation, 43 CFR 3112.4-1(a), provides in connection with leasing under 43 CFR Subpart 3112: "Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." (Emphasis added.)

> Some comments were received that suggested that agency statements be submitted at the time a lease application or offer is filed rather than within 15 days following such filing. These comments have been partially adopted. The final rulemaking eliminates the provision allowing a 15-day period for the filing of individual statements while retaining the 15-day period for the filing of uniform agreements. [Emphasis added.]

45 FR 35158 (May 23, 1980.)

In the alternative, appellant argues that the regulation is inherently ambiguous and that the Board has long held that ambiguities in Departmental regulations should be resolved in favor of public land applicants, citing a number of Board decisions, including Mary I. Arata, 4 IBLA 201 (1971). Appellant points out that the purpose of the regulation i.e., to acquire information upon which to determine whether an applicant has violated other regulations regarding multiple filings (43 CFR 3112.6-1(c)) or disclosure of other parties in interest (43 CFR 3102.2-7), is satisfied by filing at the time the lease offer is submitted.

[1] Oil and gas leasing under 43 CFR Subpart 3112 involves not only the filing of a lease application as part of a simultaneous oil and gas lease drawing (43 CFR 3112.2-1), but the submission of a lease offer by the first qualified applicant in that drawing (43 CFR 3112.4-1(a)). In Arthur H. Kuether, 65 IBLA 184 (1982), we recently concluded that appellant therein had not complied with 43 CFR 3102.2-6(a)) where he did not submit, at the time he filed his lease application, the power of attorney between himself and Federal Research Corporation, which had provided assistance to the appellant. We stated: "The regulation clearly provides that the required statement or agreement shall be submitted `with * * * the lease application if leasing is in accordance with Subpart 3112 of this title.'" (Emphasis in original). Arthur H. Kuether, supra at 187. Appellant has not persuaded us to depart from that conclusion.

Contrary to appellant's assertions on appeal, the language of 43 CFR 3102.2-6(a) is quite clear. An applicant who receives the assistance of any person or entity which is in the business of providing such assistance is required to submit documentation relating to any arrangement between the two with his offer or, when an application is being filed pursuant to Subpart 3112, with the application. The word "or" as used in the regulation does not serve to provide alternate methods of compliance. Rather, it establishes a dichotomy which limits the applicability of the preceding phrase, as in the following example.

Assume a jurisdiction which has the following traffic ordinance: "A driver shall bring his car to a complete stop when he reaches an amber traffic light, or, if a pedestrian steps in front of the car, immediately." Surely, no one would suggest that this sentence was ambiguous since it might mean that in those situations where a pedestrian stepped in front of the car the driver had the option of either stopping immediately or continuing on until he encountered a red light. This is clearly not what the ordinance

says. On the contrary, it creates an exception to the general rule and requires a driver to stop regardless of the presence of any traffic light of whatever hue. So, too, with the regulation herein.

When an application is submitted pursuant to Subpart 3112, the general rule no longer applies and the information must be submitted with the application. Indeed, the effect of appellant's attempted reading of the regulation would be to obviate the need for anyone but the successful drawee to file these documents since, under the new simultaneous procedures, only the successful drawee eventually submits an offer. Such a result would totally defeat the purpose of the regulation.

A regulation does not become ambiguous merely because it is within the capacity of man's intellect to hypothesize a circumstance in which the regulation does not say what it, in fact, says. Whatever ambiguities may infest other regulations relating to oil and gas leasing (see Brian D. Haas, 66 IBLA 353 (1982)), this one is clear. Having filed an application under Subpart 3112, appellant was required under 43 CFR 3112.2-6(a) to submit the required documents at that time. This he did not do. His application is properly rejected. 43 CFR 3112.6-1(b). 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski
Administrative Judge

We concur:

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Will A. Irwin
Administrative Judge

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Gail M. Frazier
Administrative Judge

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3/ Appellant also suggests that 43 CFR 3102.2-6(b) is also ambiguous. Even if it were, however, we fail to see how this is relevant to appellant. He did not even purport to comply with section 3102.2-6(b) as an alternative to complying with section 3102.2-6(a), so whether it is ambiguous or not it seems of scant concern to the question of appellant's compliance.